

# **Restorative Justice in the perspective of the Indonesian Criminal Justice System**

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**ABSTRACT:** Restorative justice is an important part of its implementation in the justice system in Indonesia. Restoring an atmosphere of public justice that is disrupted by the existence of a crime by involving perpetrators, victims and their families and communities directly is hope for one of the advancements in the development of law enforcement in Indonesia. The problem in this paper will discuss the two problems proposed: what is the basis for law enforcement of the Police, Prosecutors and District Court judges to carry out Restorative Justice and which institution is the most appropriate to implement Restorative Justice in the Criminal Justice System in Indonesia. The main issues above were examined using normative legal research methods, that is, research focused on studies of a norm such as in the fields of justice, legal certainty, expediency, order, and what perspective should or should be. Law enforcement using Restorative Justice is an alternative settlement that puts forward a process of dialogue and mediation involving the perpetrator, victim, family of the perpetrator/victim, and other related parties, to jointly create an agreement on the settlement of criminal cases that is fair and balanced for the victims and perpetrators by prioritizing restoration to its original state and restoring the pattern of good relations in society. This discussion is expected to be one of the inputs for progress in the criminal law enforcement system in Indonesia.

**KEYWORDS:** Restorative Justice, Criminal Justice System.

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## **I. INTRODUCTION**

Law is a very important part of the journey of a nation. It happens because the law is part of regulating, straightening and as a way to solve problems. The more modern a nation is, the laws that are needed must be more balance with the needs of the society where the law is implemented.

Restorative justice is one part of the law that hopes to complete law enforcement in Indonesia today and in the future, why is this happening? Because restorative justice is felt to be able to provide a better sense of justice for victims, both personally and in the environment where the crime occurred

The concept of restorative justice was introduced by Albert Eglas in 1977. At that time, Albert Eglas distinguished the form of criminal justice into three parts, that are retributive justice, distributive justice and restorative justice. It was explained that Restorative justice in principle is to involves victims and perpetrators in a process that aims to secure reparations for victims and rehabilitate perpetrators. [1]

It is important to note that restorative justice is very possible to participate in reducing the occurrence of overcapacity that occurs in the placement of prisoners in correctional institutions in the future. Besides that, it is very important to restore the sense of justice in the community more quickly.

Based on the background above, the following problems arise:

1. What is the basis of law enforcement for the Police, Prosecutors and District Court judges to carry out Restorative Justice?
2. Which institution is the most appropriate to implement Restorative Justice in the Criminal Justice System in Indonesia?

## **II. METHODOLOGY**

The main issues above are examined using normative legal research methods, that is research focused on the study of a norm (because it is called normative) such as in the fields of justice, legal certainty, expediency, order, and what perspective should be.

Normative research fully uses secondary data (library material). This study uses primary legal materials, secondary legal materials and tertiary legal materials. The legal materials were obtained through a literature study. To get an overview of the object of research and find answers to the problems that have been described previously, the data or information that has been obtained will be processed qualitatively and presented descriptively.

### **III. DISCUSSION**

#### **1. The basis of law enforcement for the Police, the Prosecutor's Office and Judges of the District Courts carry out Restorative Justice**

Legal protection in restorative justice summarizes many interests held by victims and perpetrators, both parties are brought together to bring these various interests together to find a solution for both parties. This court is a court that is different from the judiciary in general, which prioritizes the integration approach of the perpetrator on the one hand and the victim or the community on the other as a unit to seek solutions and return to good relations in society.

Restorative justice is justice that emphasizes redress for harm caused or related to a crime. The process is carried out through a cooperative process that involves all parties (stakeholders). [2]

In the development of modern law, Restorative Justice was known in Canada in the 1970s as known as victim-offender mediation. Initially, this program was implemented as an alternative measure in providing sanctions to child criminals, which before the punishment was carried out, the perpetrator and the victim were allowed to meet to formulate a proposal for a sentence that would be considered by the judge. [3] Restorative justice has experienced rapid development in several countries in the last twenty years such as in Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the Pacific region.

In Indonesia, the nature of restorative justice has actually been known for a long time, especially in customary courts such as in Papua, Bali, Toraja, Minangkabau and many others in indigenous communities in Indonesia. The settlement of a criminal case in the customary community is carried out without involving law enforcement officials in it. The measure of justice in solving the problem is based on conviction and forgiveness, not based on retributive justice in the form of revenge or imprisonment. For example, in Java Island, it is known as lembaga rembug desa (a village meeting institution), which aims to resolve customary offences that occur in the community. In the process, the perpetrators and victims as well as the community are brought together to conduct deliberation to find the best solution for the customary offences that have occurred. This settlement takes into account various aspects, one of which pays attention to the impact experienced by the victim and the ability of the perpetrator to restore the victim. [4]

Law is always developing according to the needs of society, the more modern the dynamics of society, the law must also be able to adapt it. The use of Restorative Justice is one example of progress in handling criminal law enforcement, especially criminal procedural law.

The existence of Restorative justice is very interesting to continue to be developed because it is seen as one way to reduce the number of inmates of correctional institutions which is currently one of the problems that occur in Indonesia. Currently, the occupancy rate of correctional institutions in Indonesia is 101 percent. According to data from the Directorate General of Corrections at the Ministry of Law and Human Rights of the Republic of Indonesia as of September 12, 2021, the capacity of prisons in 33 Regional Offices is 134,835 thousand people, but the number of occupants reaches 271,007 people. This means that there is an excess of 136,173 prison occupants or double the total (101%).[5] An excess capacity that is too large will not provide maximum benefits for its occupants. In fact, it is not uncommon to cause disasters such as fires or riots.

Provisions for the implementation of Restorative Justice already exist and are owned by law enforcement agencies, investigators, public prosecutors and the Supreme Court, however, their implementation is still not well known to the public. The implementation of new restorative justice is heard more often when the Attorney General's Office issues Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice.

The Police Agency in 2018 issued a Circular Letter of the Chief of Police Number: SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. The purpose of the issuance of the regulation is so as not to create diversity in the administration of investigations and differences in the interpretation of investigators as well as irregularities in their implementation.

The Supreme Court issued a provision regarding restorative justice through the Decree of the Director-General of General Courts No. 1691/DJU/SK/PS.00 /12/2020, 22 Dec 2020, in this provision it is stated that the basic principle of restorative justice is the recovery of victims who have suffered as a result of a crime by providing compensation to victims, peace, perpetrators doing social work or other agreements. A fair law in Restorative Justice is of course impartial, not arbitrary, and only in favour of applicable regulations and considers equal rights to compensation and balance in every aspect of life.

#### **2. The most appropriate institution to implement Restorative Justice in the Criminal Justice System in Indonesia**

Law enforcement that occurs in society will end with the imposition of a criminal, thoughts about it more or less begin to erode with the passage of time. That the imposition of a crime is still necessary, however, another approach is needed, especially for criminal acts that have a big impact on the victim and the community.

The thought of restoration being a way out is quite calculated. With restoration, the situation is returned as before it was not criminal.

For the Indonesian people, the resolution of a problem related to a criminal act through a settlement that prioritizes the restoration process has actually happened for a long time and is not something new. Departing from the goal for the perpetrator to be able to repair what he has damaged that causes victims, that are the victims themselves and the surrounding community. Therefore, the main goal to be achieved by Restorative Justice is in the form of meetings and discussions of related parties so that solutions to problems that arise as a result of criminal acts can be found.

In the law enforcement process that has been carried out so far, the victim carries out his duties as a witness in the judicial process. The victim was asked for information regarding the process of the occurrence of a criminal act related to these conditions. Whereas Restorative Justice will place the victim as a party who plays an active role, the victim is more empowered so that the victim has the personal right to actively participate in this process. Settlement through Restorative Justice outside the court provides an opportunity for victims to convey their demands and interests to the perpetrators. Thus the victim can ask the perpetrator to pay compensation according to his wishes which are then approved by the perpetrator. If there is an agreement on this matter, it can give satisfaction to the victim, so that the victim is voluntarily willing to give forgiveness to the perpetrator.

Cases that can be terminated or closed by law must meet the requirements as regulated in Prosecutor's Regulation Number 15 of 2020, that is a suspect has committed a crime for the first time, the criminal penalty is not more than 5 years and the value of the loss incurred is not more than IDR 2.500.000 The other conditions that must be fulfilled according to the provisions of Article 5 paragraph (6) are:

- a. There has been a recovery back to its original state carried out by the suspect by:
  - 1) Returning the goods obtained from the crime to the victim
  - 2) Compensate for the victim's loss
  - 3) Compensate for costs incurred as a result of criminal acts; and or
  - 4) Repair the damage caused by the crime.
- b. There has been a peace agreement between the victim and the suspect
- c. The community responded positively.

The criminal acts that cannot be resolved using the Restoration Justice route are:

- a. Crimes against state security, the dignity of the president and vice president, friendly countries, heads of friendly countries and their representatives, public order and morality.
- b. Criminal acts that are punishable by a minimum criminal threat.
- c. Narcotics crime
- d. Environmental crimes and
- e. Criminal acts committed by corporations.

The handling of criminal acts based on Restorative justice within the Polri is regulated in Polri Regulation Number 8 of 2021, it is determined that it must meet general and specific requirements. General requirements apply to the activities of carrying out the Criminal Investigation function, investigation, while special requirements only apply to criminal acts based on Restorative justice in investigation activities.

The general requirement is that the handling of criminal acts based on Restorative justice includes material and formal matters. Material requirements include:

1. does not cause unrest and/or rejection from the public;
2. does not result in social conflict;
3. does not have the potential to divide the nation;
4. not radicalism and separatism;
5. is not a repeat offender based on a court decision; and
6. is not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.

While the general requirements in the form of formal requirements include:

1. Reconciliation from two parties as evidenced by a peace agreement and signed by the parties, except for Narcotics crime.
2. Fulfillment of the rights of the victim and the responsibility of the perpetrator, in the form of returning goods, compensating for the loss, compensating for the costs incurred as a result of the crime and/or replacing the damage caused by the crime. Evidenced by a statement letter in accordance with the agreement signed by the victim (except for narcotics crimes)

Settlement through restorative justice is becoming increasingly interesting to ask which law enforcers are the most appropriate to enforce. Empirically, the settlement of criminal acts through restorative justice can be carried out by the Police, the Attorney General's Office and the Court, however, at the normative level, we must be able to provide a more precise understanding.

The National Police has the authority to stop investigations and investigations based on restorative justice with the background of having the task of protecting and protecting the community. In addition, the application of Restorative Justice is considered by the National Police Chief to really be able to reduce the number of inmates of prisons overflowing. The National Police Chief believes that the handling of cases with Restorative Justice is a step to follow the dynamics of the development of the legal world which has begun to shift from positivism to progressive justice to fulfill the community's sense of justice.

Prosecutor's Regulation Number 15 of 2020 has a philosophy of restorative justice which is carried out to protect small communities, according to the essence of restorative justice, namely "recovery". Therefore, the principle of the prosecutor's office in this case is to restore the peace that had faded between victims, perpetrators and the community. Justice based on peace between perpetrators, victims and the community is the moral and ethical of restorative justice because basically justice and peace cannot be separated.

The Prosecutor's Office is an institution that has *dominis litis* principles and has been universally recognized and is reflected in Article 2 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which states that the Prosecutor's Office is a government institution that carries out state power in the field of prosecution and other authorities based on law. laws, which are implemented independently. In line with the principle that the prosecutor's office is one and inseparable, no government agency can carry out the prosecution for and on behalf of the state.

In proceedings to resolve criminal acts, after Indonesia became independent, statutory provisions based on HIR (*Herzien Inlandsch Reglement*) were used, but since 1981, specifically for criminal procedural law, HIR has not been used but refers to Law no. 8 of 1981 concerning the Criminal Procedure Code. One of the things regulated in the Criminal Procedure Code is the prosecutor's authority in carrying out prosecutions, as formulated in Article 1 number 6 letter a of the Criminal Procedure Code which states that the prosecutor is an official authorized by this law to act as a public prosecutor and carry out court decisions that have obtained power fixed law. Meanwhile, the authority of a prosecutor is to act as a public prosecutor and act as an executor of court decisions.

In terms of the prosecution's authority, it can be said that during this trial, the main role of the Prosecutor as a public prosecutor is to prove the guilt of the accused. Meanwhile, the definition of prosecution is the action of the public prosecutor to delegate a criminal case to the competent district court in terms and according to the method regulated in this law with a request that it be examined and decided by a judge in a court session. (Article 1 point 7 of the Criminal Procedure Code). Several policies formulated in the Criminal Procedure Code explain the existence of the duties and authorities of the Prosecutor, especially in carrying out prosecutions in his position as a Public Prosecutor. The prosecution authority is limitedly regulated and held by the public prosecutor as a monopoly, meaning that no other body has the right to do so.

The authority to sue or not to sue is owned by the prosecutor's office which opens up more appropriate opportunities to carry out restorative justice actions in the criminal justice system in Indonesia. Based on the *dominitis litis* principle, the prosecutor's office can implement it. The investigation has been carried out by the investigator in full and the public prosecutor has looked carefully at the case so that the consideration for imposing restorative justice is really based on careful legal considerations.

The court sees Restorative Justice as an approach in solving problems involving victims, perpetrators, and elements of society in order to create justice. In relation to criminal law enforcement, restorative justice is an alternative for resolving criminal cases, which initially focused on punishment, into a process of dialogue and mediation involving perpetrators, victims, families of perpetrators/victims, and other related parties, to jointly create an agreement. for the settlement of criminal cases that are fair and balanced for the victims and perpetrators by prioritizing the restoration to its original state, and restoring good relations in society.

The application of the judiciary at the judicial level can still be carried out so that it is in accordance with the objectives in the application of restorative justice, that is empowering victims, perpetrators, families and communities to improve the consequences of a criminal act that has been committed, using awareness and conviction as a basis for improving social life (the concept of not seeing justice from one side, but looking at it from various parties, both for the benefit of victims, perpetrators and society).

Marc Galanter in Satjipto Rahardjo [6] mentions of courts that can be run in many places (justice in many rooms). This paper illustrates the complexity and perhaps also the relativity of the courts and which therefore cannot be monopolized by state courts. As an example, people's courts can actually work more effectively than district courts which are bound by so many procedures. It is argued that it is troubling to conclude that discussing access to courts simply requires people to take matters to court. This is too narrow, the court should be expanded to include a variety of bodies that also undertake problem solving.

#### IV. CONCLUSION

##### 1. Conclusion

a. The legal basis for the application of Restorative Justice to the Police Institution is the Circular Letter of the Chief of Police Number: SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. Meanwhile, the legal basis governing the Prosecutor's Office is the Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. And the Supreme Court issued provisions regarding restorative justice through the Decree of the Director-General of General Courts No. 1691/DJU/SK/PS.00 /12/2020, December 22, 2020. The provisions above provide complete and clear provisions regarding the procedures for restorative justice. can be implemented, as well as the terms and conditions that must be carried out.

b. Police, Prosecutors and Courts have the authority to carry out Restorative Justice, however, from a normative point of view, the Prosecutor's Office has more appropriate competence in line with its dominis litis principles.

##### 2. Sugestions

a. There is a need for laws and regulations that regulate more integrated matters regarding Restorative Justice so that there is no tug of war for its application between the three existing law enforcement agencies, namely the police, prosecutors and courts.

b. It is necessary to have more progressive Prosecutors so that the handling of Restoratiev Justice can develop more rapidly following the development of community dynamics.

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